IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Letters Patent Appeals Nos.1000 to 1008 of 1996
And
Letters Patent Appeals Nos.1128, 1130,1131, 1060, 1061, 1119 and 1276 of 1996
And
Letters Patent Appeals Nos.7 to 11 of 1997 and Letters Patent Appeals Nos.1387 and 1389 of 1996
And
Letters Patent Appeal Nos.12 and 1396 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

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5. Whether it is to be circulated to the Civil Judge? : NO

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GENERAL INSURANCE CORPORATION OF INDIA

Versus

DHARI VIVID KARYAKARI SAHAKARI MANDAL LTD

Appearance:
Ms.Harsha Devani, learned AGP for State of Gujarat in all these matters.

Mr.P.V.Nanavati for the General Insurance Corporation.
Mr.B.M.Mangukia for
Paravadi Seva Sahakari Mandli Ltd.,
The Sukhpar Seva Sahakari Mandali Ltd.,
Pansada Sitapur Sahakari Mandali Ltd.,
Surangar Seva Sahakari Mandali Ltd.
Motivavadi Group Multipurpose Co-operative Society Ltd.

Mr.Tushar Mehta for Dhari Vivid Karyakari Sahakari Mandali Ltd.
Mr.Mehul K. Vakharia for Gujarat State Co-operative Bank.
Mr. Shrish Joshi for Bhavnagar District Co-operative Bank.
Mr.Jayant Patel for District Central Co-operative Bank Ltd., Amreli.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/08/2001

CAV COMMON JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. This group of 25 Letters Patent Appeals is directed against the common order dated 7.8.96 passed in a group of nine Special Civil Applications and order dated 14.8.96 (based on the earlier order dated 7.8.96) passed in the Special Civil Application No.1041/88. Out of these 25 Letters Patent Appeals, 7 Letters Patent Appeals Nos.7/97 to 11/97 and Letters Patent Appeal No.1387/96 and Letters Patent Appeal No.1389/96 have been filed by State of Gujarat against the common order dated 7.8.96, 9 Letters Patent Appeals Nos.1000 to 1008 of 1996 have been filed General Insurance Corporation against very same common order dated 7.8.96, 7 Letters Patent Appeals Nos.1128, 1130, 1131, 1060, 1061,1119 and 1276 of 1996 have been filed by different Co-operative Societies and the Bhavnagar District Co-operative Bank - all against common order dated 7.8.96 and 2 Letters Patent Appeals Nos.12/97 and 1396/97 have been filed by State of Gujarat and General Insurance Corporation respectively against the common order dated 14.8.96. Nine Special Civil Applications i.e. Special Civil Applications Nos.1410/87, 1409/87. 350/87, 982/87, 1991/87, 3182/87, 1541/87, 1410/87 and 1991/87 were decided by common judgment and order dated 7.8.96 by learned single Judge. Against this common judgment and order dated 7.8.96 State of Gujarat preferred the following seven Letters Patent

Appeals as under:-

1. L.P.A.No.7/97 (In Special Civil Application No.1410/87)
2. L.P.A.No.8/97 (In Special Civil Application No.1409/87)
3. L.P.A.No.9/97 (In Special Civil Application No.350/87)
4. L.P.A.No.10/97 (In Special Civil Application No.982/87)
5. L.P.A.No.11/97 (In Special Civil Application No.1991/87)
6. L.P.A.No.1387/96 (In Special Civil Application No.3182/87)
7. L.P.A.No.1389/96 (In Special Civil Application No.1541/87)

No Letters Patent Appeals by State of Gujarat are there before us against the order dated 7.8.96 in Special Civil Application No.1655/87 and Special Civil Application No.1842/87.

Against this very common judgment and order dated 7.8.96, General Insurance Corporation of India preferred 9 Letters Patent Appeals as under:-

1. L.P.A.No.1000/96 (in Special Civil Application No.1541/87
2. L.P.A.No.1001/96 (In Special Civil Application No.1842/87)
3. L.P.A.No.1002/96 (In Special Civil Application No.3182/87)
4. L.P.A.No.1003/96 (In Special Civil Application No.1655/87)
5. L.P.A.No.1004/96 (In Special Civil Application No.350/87)
6. L.P.A.No.1005/96 (In Special Civil application No.982/87)
7. L.P.A.No.1006/96 (In Special Civil Application No.1409/87)
8. L.P.A.No.1007/96 (In Special Civil Application No.1410/87)
9. L.P.A.No.1008/96 (In Special Civil Application No.1991/87)

Against the very same common judgment and order dated 7.8.96, the Letters Patent Appeals as under were filed:-

1. L.P.A.No.1130/96 in Special Civil Application No.1410/87 by Paravadi Seva Sahakari Mandli Ltd. (through Mr. B.M. Mangukia).

2. L.P.A.No.1131/96 in Special Civil Application No.1991/87 by The Sukhpar Seva Sahakari Mandali Ltd. (through Mr. B.M.Mangukia).
3. L.P.A.No.1060/96 in Special Civil Application No.1409/87 by Pansada Sitapur Sahakari Mandali Ltd. (through Mr. B.M.Mangukia).
4. L.P.A.No.1061/96 in Special Civil Application No.1409/87 by Surangar Seva Sahakari Mandali Ltd. (through Mr. B.M.Mangukia).
5. L.P.A.No.1128/96 in Special Civil Application No.1991/87 by Motivavadi Group Multipurpose Co-operative Society Ltd. (through Mr.B.M.Mangukia).
6. L.P.A.No.1276/96 in Special Civil Application No.1410/87 by The Bhavnagar District Co-operative Bank Ltd. (through Mr.Shrish Joshi).
7. L.P.A.No.1119/96 in Special Civil Application No.1541/87 by Dhari Vivid Karyakari Sahakari Mandali (through Mr. Tushar Mehta).

Against the judgment and order dated 14.8.96 (based on the order dated 7.8.96) in Special Civil Application No.1041/88 the two L.P.As. as under were filed:-

1. L.P.A.No.12/97 in Special Civil Application No.1041/88 by the State of Gujarat.

2. L.P.A.No.1396/97 In Special Civil Application No.1041/88 by General Insurance Corporation.

2. All these 25 Letters Patent Appeals are directed against the impugned common judgment and order dated 7.8.96 and impugned judgment and order dated 14.8.96 (based on the earlier order dated 7.8.96) passed in different Special Civil Applications, referred to as hereinabove. The State of Gujarat, General Insurance Corporation of India as well as the Co-operative Societies and the Bhavnagar District Co-operative Bank are all aggrieved against these two common judgments and order dated 7.8.96 and the order dated 14.8.96. In all these Appeals grievances are raised by the parties, which are required to be considered on identical facts and involve common question of law and, therefore, we propose to decide all these 25 Letters Patent Appeals by this common judgment and order as under:-

3. Central Government introduced a countrywide Crop

Insurance Scheme for Kharif 1985. It was decided to operate this Scheme through General Insurance Corporation of India with the involvement of the concerned State Government. The object of the Scheme was to provide a measure of financial support to farmers in the event of crop failure as a result of drought, flood etc. and to restore the credit eligibility of farmers, in case of crop failure and to support and stimulate production of cereals, pulses and oil seeds. For the purpose of implementation of this comprehensive Crop Insurance Scheme, Ministry of Agriculture and Rural Development (Department of Agriculture and Co-operation), Government of India sent a letter dated 3.5.85 to Chief Secretaries of all the State Governments and the Union Territories. This new comprehensive Scheme was to be implemented for Kharif 1985 season. Government of Gujarat thereupon decided to implement this Scheme for Kharif season of 1985 in collaboration with General Insurance Corporation and Government of India and the Resolution to this effect was passed on 1.8.85 by the State Government of Gujarat in Agriculture and Rural Development Department. A meeting was then held on 21.10.85 for implementation of the Clauses in the Scheme. It was considered in this meeting that even though the cut off date for sending declaration and premium was 31.10.85, most of the District Co-operative Banks had not sent the necessary declarations and the premium amount and, therefore, the cut off date was required to be extended by another 10 days. Accordingly all the Nodal Banks were to see that necessary declarations for the specified crop in specified defined areas, the amount of premium should be sent to General Insurance Corporation on or before the cut off date as 10.11.85.

The Scheme provides for the collection of the premium from the farmers, who are growing insured crops through the agency of primary Agricultural Co-operative Credit Societies, District Co-operative Banks and the State Co-operative Banks. Farmers availing the crop loans from Co-operative Credit Institutions, Commercial Banks and Regional Rural Banks for raising insured crops were entitled to the benefits of the Scheme and premium chargeable was 2% of the sum insured for rice, wheat and millet crops and 1% of the sum insured for oil seeds and pulses. The sum insured was 15% of the loans disbursed in respect of the insured crops for the Kharif 1985 which was the insured season. This Scheme was in fact announced on the Floor of Parliament in February 1985 at the time of introduction of the Budget and the Government of India had organised a Workshop so as to apprise the concerned institutional authorities regarding the steps

to be taken for the implementation of the comprehensive Crop Insurance Scheme. The National Workshop on Crop Insurance was held on 1.5.85 and the need for the facilities to be given for the disbursement of the loans to the farmers was emphasised. By the time the State Government of Gujarat responded to the proposal of Government of India by the Government Resolution dated 1.8.85, Kharif season had already commenced. Kharif season ends by October or November every year, depending upon the rainfall in the area. The rainfall in the Amreli District in the year 1985 was late inasmuch as it had commenced on or after 15.7.85 instead of 10.6.85. This late rainfall pushed ahead the Kharif season to November 1985 in Amreli District. The farmers were required to take loans and advances right from the month of January onwards till the end of November or middle of December depending upon the rainfall in the area. The Co-operative Institutions, which are disbursing the loans to the farmers, are, therefore, disbursing agricultural loans right from January onwards till the end of October or November. The Primary Co-operative Societies were, therefore, required to advance agricultural loans towards insured crops in the months of October and November in Amreli District. Out of total 104 crop cutting experiments in Amreli District, 40 crop cutting experiments were carried out in the month of October and rest of the crop cutting experiments were carried out in the month of November, suggesting that there was a standing insured crop like groundnut and Bajri in the month of October and November 1985 in Amreli District. This gave rise to the grievance that the crop loans for Kharif 1985 were to be calculated from the month of January, 1985 to the end of November, 1985. The Primary Co-operative Societies, therefore, challenged the decision of the General Insurance Corporation fixing the dates of 1.4.85 and 30.9.85 as the two cut off terminal dates as well as the decision to refund the premium for the period prior to 1.4.85 and not to calculate the amount of damages on the basis of the crop loans advanced between January 1985 to 31.3.85 and 1.10.85 to 10.11.85. The Special Civil Applications were, therefore, filed for quashing and setting aside the decision of fixing the dates of 1.4.85 and 30.9.85 as the cut off dates for the purpose of settling the insurance claims of the farmers for the insured crops for 1985 Kharif season and for a direction against the respondents to take into consideration the crop loans disbursed between January 1985 to 31.3.1985 and 1.10.85 to 10.11.85 for the purpose of settling the insurance claims for the insured crops for Kharif 1985 season with consequential reliefs with 15% interest per annum.

4. The common grievance, which was raised in different Special Civil Applications arising from different Districts, was that their claims had not been entertained on the ground that the loans for the Kharif 1985 season commenced only after 1.4. 1985 and ended on 30.9.85, although in State of Gujarat Kharif season had commenced from January and lasted upto November; that for the purpose of agricultural operation right from the month of January 1985 the farmers are required to take loan and advances from the Primary Co-operative Societies.

5. The learned single Judge, after narrating the sequence of events, has discussed:-

A

Special Civil Applications arising from different Districts of Saurashtra region-

Special Civil Applications Nos.1541/87 and 1842/87 arising from Amreli District.

Special Civil Application No.3182/87 from Bhavnagar District.

Special Civil Application No.1655/87 from Jamnagar District.

In these petitions direction was sought for setting aside the dates of 1.4.1985 and 30.9.1985 as the cut off dates for the purpose of settling the insurance claims of the farmers for the insured crops of 1985 Kharif season. The common grievance raised before the learned single Judge on behalf of petitioners was that the claims had not been entertained by the respondents on the ground that the Crop Loans for Kharif 1985 season commenced only after April 1985 and ended on 30.9.1985. The case of the petitioners in these matters was that in the State of Gujarat, Kharif season commences from the month of January and extends till November every year, depending upon the rainfall in the area; right from the month of January, the farmers are required to take loans and advances from Primary Co-operative Societies, in the year 1985 rainy season started late, first rainfall was on or about July 15, 1985 and, therefore, Kharif season was upto the end of November 1985, that the respondents had accepted the premium on the basis of which loans were disbursed from January 1985 to 10.11.1985 without raising any objection and, therefore, their claims could not be rejected on the ground that the loans prior to 1.4.1985

and beyond 30.9.1985 were not covered under the Scheme. It was also submitted that the Scheme was introduced as late as in the month of August 1985 and was implemented in October 1985 in the State of Gujarat. With reference to the discussion in the National Conference on Crop Insurance held on July 17, 1985 at New Delhi it was submitted that the consensus in the conference was that all Crop Loans disbursed for the specified crops from 1.4.85 should be covered under the Scheme and the claims for the period prior to 1.4.85 had been given up, that there was no mention of the cut off date of 30.9.85 in any of the letters or the circulars or the Minutes of any meeting or conference, that once the premium had been accepted, it was not open for the General Insurance Corporation of India to refund the premium and deny the liability and that General Insurance Corporation was only an instrumentality of the Scheme sponsored by Government of India. While placing reliance on the Summary of the record of the Conference dated 17.7.85 it was submitted that under clause (2) it was agreed by all concerned that loans shall be disbursed from 1.4.85 and no outer limit of the period had been provided, cut off dates for sending the proposal to General Insurance Corporation for Kharif season was 30.10.85 and for this purpose the Dictionary meaning of Kharif, as given in the English short Oxford Dictionary and "Bhagwat go Mandal" (Gujarati Dictionary) was also relied upon.

B. Special Civil Applications Nos.350/87 and 982/87, arising from Ahmedabad District.

The case of the petitioners was that Talukas of Sanand and Viramgam of Ahmedabad District were covered in respect of the crops of paddy and bajri. It was stated that the Agreement came to be entered into between GIC and the Gujarat State Co-operative Bank, on behalf of Ahmedabad District Co-operative Bank. As per this Agreement, the Insurance coverage was provided and that as per the practice, the Crop Loan for Kharif season is disbursed from January. It was submitted that the Scheme was first adopted in the State of Gujarat in August, 1985 and the District Banks were instructed to sanction additional loan amount to the borrowing members to cover up the costs of insurance premium in respect of Crop Loans for the crops covered. The District Banks had forwarded the declarations, including the loans disbursed from January 1985, and the insurance premium was paid accordingly. After accepting the premium, after almost an year's time, in September, 1986 the GIC tried to return the premium when it had become clear that there was complete drought and full insurance coverage was

required to be paid. It was also stressed that GIC and the State are estopped from questioning the loans advanced by Banks and Credit Societies from January as per the prevailing usage since long. It was submitted that the petitioners were, therefore, entitled to Insurance coverage from 1.1.85 to 31.3.85 also. It was also submitted that the Crop Loan Insurance was a matter between the Co-operative Bank and the GIC and, therefore, there was no question of any intervention by Union of India. It was also pointed out that the GIC had not taken any independent decision in fixing the cut off date,but it had acted under the instructions of Union of India.

C. Special Civil Applications Nos.1049/87, 1410/87 and 1991/87 and arising from the District of Bhavnagar and their case was the same as has been stated hereinabove with regard to the Special Civil Applications mentioned as above.

D. Special Civil Application No.1041/88 decided on 14.8.96.

6. According to Mr. Mangukia, appearing on behalf of the Co-operative Societies the Scheme of 1985 was a Crop Insurance Scheme and not Crop Loan Insurance, that no time limit had been prescribed under the Scheme as such and the State/Union of India/GIC could not enforce any time limit, once the proposals for insurance were accepted and the GIC had agreed to indemnify, it could not be permitted to go back without following the due process of law. Mr. Mangukia has submitted that GIC had taken a decision not to cover the Loans disbursed prior to April 1, 1985 under instructions of Government of India, Ministry of Agriculture, which on the face of it was illegal as the GIC had not taken any independent decision and, therefore, it was clear that the cut off date had been applied only to escape the liability.

7. The stand taken by Gujarat State Cooperative Bank supports the case of the original petitioners and the stand of District Co-operative Banks supports the case of the Gujarat State Cooperative Bank. On behalf of Gujarat State Co-operative Bank, its General Manager Mr.M.M.Vyas had filed a reply stating therein, that in his capacity as the Chief Executive of the Gujarat State Co-operative Bank he had attended the National Workshop on Crop Insurance on May 1, 1985. According to him the comprehensive Crop Insurance Scheme is essentially and basically a Scheme prepared by the Government of India

and the Conference was convened not for any discussion but for the purpose of giving information regarding the implementation of the Scheme and the implementation of the Scheme during Kharif 1985 was not the subject matter of discussion as the same had already been approved by the Cabinet and in the conference only operational problems were considered. That at no point of time it was ever clarified that the loans and advances only after 1.4.85 and before 30.9.1985 will be covered, that the entire loans and advances for notified Kharif crop were covered under the Crop Insurance and the premium from the farmers were collected by Primary Co-operative Societies on that basis. The premium so collected were to be paid to the GIC through the District Co-operative Banks and the GIC accepted the premium. In the Conference, the participants were only asked to report on the progress of the implementation of the Scheme, that the State Government had adopted the Scheme under Resolution dated 1.8.85 and even in the said Resolution, the cut off dates 1.4.85 and 30.9.85 had not been given. He has made reference to the letter dated 12/13-2.1987 sent by the Registrar, Co-operative Societies, that Gujarat State Co-operative Bank Ltd. had made special efforts in insuring the maximum coverage of Crop Loan in the State of Gujarat and it was at their instance and advice that the farmers had taken the Crop Insurance. Had the 1985 Kharif Crop would not have failed on account of insufficient rain, the GIC could have made a profit out of the amount paid by farmers. The Kharif crop failed because of the failure of the monsoon and, therefore, the farmers were seriously affected and, therefore, it was legitimate for the farmers to expect the insurance claim. On behalf of the State Co-operative Bank it was also argued that essentially it was a Crop Insurance Scheme and the loan was only a standard. In the original Resolution of Gujarat State dated 1.8.85 also there was no cut off date. Loans were disbursed even after 1.4.85 and to introduce the cut off date at a later stage amounts to modification of the Scheme.

8. On behalf of Union of India, the Under Secretary of the Government of India, Ministry of Agriculture, Department of Agriculture and Co-operation, one Shri Alok Bhatnagar has filed his affidavit in reply to Special Civil Application No.350/87. Mr. Bhatnagar has also referred to the workshop which was held on 1.5.85 and the National conference held on 17.7.85 and has stated that it was agreed between all the parties concerned i.e. Reserve Bank of India, NABAD, State Governments and GIC etc. that the Scheme will cover the Crop Loans disbursed on and from 1.4.85 and the Government of Gujarat had

accordingly agreed to introduce the Crop Insurance Scheme in July 1985 for the Kharif period of the said year keeping in mind that the Scheme will cover the loans disbursed on and from 1.4.85. He has also referred to the Manual of the Agriculture Credit Department of the Reserve Bank of India which lays down that the Kharif loaning starts from 1.4.85 and asserted that GIC is the agency of Government of India and as such it was bound by the Kharif period as provided in the Manual of the Agriculture Credit Department, that the Conference was attended by representatives of the implementing States/Union Territories including the Government of Gujarat as also the representation from the Agencies involved in the implementation of the Scheme and that in this Conference, a decision was taken that the loans advanced for crops covered under the Scheme subsequent to 1.4.85 would only be considered for the purpose of extending insurance cover envisaged in the Scheme, that the State of Gujarat had adopted the Scheme knowing it fully well that it does not cover the loans disbursed prior to 1.4.85. According to him the Scheme was compulsory for all the farmers availing the Crop Loans from concerned Institutions for raising wheat, paddy, millets, oil seeds and pulses, that there was an inbuilt insurance coverage as a part of Crop Loan for raising crops in the defined areas, where the insurance Scheme is extended, that the Loan amount for each crop for the given area is decided with reference to the scale of finance fixed by a Technical Committee constituted from time to time for each Districts in the State, that the total sum which is incurred and not the crop which is raised is covered under the Scheme, that out of the total indemnity, claims paid by the GIC was to the tune of Rs.83 crores of Kharif season 1985 and share of the State of Gujarat was the highest i.e. Rs.53.55 crores and looking to the unexpected huge claims from the State of Gujarat, a central team was deputed to examine the matter and it was found that in the Amreli and Bhavnagar Districts of the region, the loan of nearly Rs.20 crores had been advanced fraudulently to the farmers without any justification during the period of January to March 1985, when the Scheme was not in operation and even during the period of October to November 1985, by which time the crop had either been harvested or was about to be harvested, that the Co-operative Credit Institutions, Commercial Banks and Regional Rural Banks in the State of Gujarat could not unilaterally bind the GIC for the purpose of Crop Insurance, merely by completing procedural formalities regarding loan and advancement unless and until such proposals were verified and found to be in order and accepted by the Insurers, that the

petitions had not been filed by the farmers, who could be the real claimants, but had been filed by the Banking and other Financial Institutions or Agencies, who had only forwarded the proposals without proper scrutiny. It was further submitted on behalf of the Union of India that the GIC could not travel beyond the Scheme of Union of India as it was only an agency or instrumentality of the Union of India for the purpose of implementation of the Scheme and it was contended that the coverage of the Crop Loan Insurance was provided only for the period April 1, 1985 to September 30, 1985.

9. So far as GIC is concerned, affidavit in reply had been filed by Deputy Manager of GIC, namely, Shri A.C.Desai, raising preliminary objection that the disputed questions of facts are involved in the case for the determination of the Kharif period and writ, with respect to breach of contractual rights or enforcement of an agreement could not be sought in the writ proceedings, that the Government of Gujarat knows the cropping pattern and short duration of rain in the State of Gujarat, that there was no question of introducing the Scheme retrospectively from January, 1985, that the Agriculture Department of the State of Gujarat carries on crop cutting experiments and it was done so also for the Kharif season 1985.

10. On behalf of GIC reliance was also placed in Reserve Bank of India's Manual on production - Paras 29 to 50 and it was admitted that even if any premium is accepted for the loan period, either prior to 1st April 1985 or beyond 30th September, 1985, it could not enure benefit of insurance cover under the Scheme of 1985, that since it was the first year of the Scheme, the local agencies, without properly understanding the scope of the Scheme, accepted the proposals and transferred the same, but on that basis no right is to be created. While criticising the conduct of the Gujarat State Co-operative Bank Ltd., it was submitted on behalf of the GIC that the Gujarat State Co-operative Bank Ltd. could not be heard in support of the petitioners.

11. On behalf of State of Gujarat, reply was filed through its Under secretary Mr.J.K.Jani stating therein that there was no infringement of legal rights, that the petitions involve disputed questions of facts and the petitions are based on assumed practice and usage with regard to the commencement of the Kharif season and the loaning activity of the Kharif season, which is purely a question of fact. The objection with regard to the locus standi of the petitioners was also taken and it was

stressed that the idea of covering such loan under the Crop Insurance Scheme is nothing but to take an undue advantage and to defeat the very object of the Scheme, that the loan advancing agency is always free to advance loan, but the crop loan insurance could be utilised only for raising the crop. According to this reply also Kharif period of 1985 was from 1.4.85 to 30.9.85 only and the Government of Gujarat had sanctioned the Scheme of 1985-86 by Resolution dated 1.8.85, that the Scheme is to commence from 1.4.85 as agreed in the Workshop and the Conference at New Delhi, that Sanand and Viramgam Talukas were notified for Kharif Bajri and Kharif Paddy crops during 1985-86 and 1986-87. Sowing of Kharif crops like paddy and bajri takes place only towards the end of June and July and, therefore, it was not probable that the farmers would require a crop loan prior to April. The two Special Civil Applications arising from the Districts of Ahmedabad are only with respect to the crops of paddy and bajri and in that event, there is no question of disbursement of crop loan prior to April, 1985.

12. On behalf of State of Gujarat, a preliminary objection, about the disputed questions of facts involved in the case for the purpose of determining the period of Kharif season, was also taken and reference was made to the Manual on production oriented system of loaning for agriculture issued by the Reserve Bank of India, Agriculture Credit Department, Mumbai - the Part I of which deals with the crop loans. Reference was made to Para 35, which provides the time schedule. It was submitted that the important requirement of the crop loan system is that all necessary procedural formalities should be planned so as to ensure that credit is dispensed to members at the time when they need it most. Para 50 of the Manual was also relied upon to show that the problem of fixing the suitable date for re-payment may be either in the month of April or May only and that the Manual had been prepared by the Reserve Bank of India on the basis of survey and investigation by the experts and, therefore, it should be relied upon.

13. Learned single Judge while partly allowing the group of Special Civil Applications has directed the respondents to settle the insurance claims for the insured crops in respect of Kharif 1985 considering the period of crop loan disbursements between April 1, 1985 to November 10, 1985 and to that extent rule has been made absolute. Aggrieved from these two judgments and orders dated 7.8.96 and 14.8.96, the present Letters Patent Appeals have been filed.

14. In Letters Patent Appeals Nos.7 to 11 of 1997 and Letters Patent Appeals Nos.1387/96 and 1389/96,the judgment of the learned single Judge is challenged by the State Government on the ground that Kharif season in fact starts from 1st April and ends on 30th September and this fact is clear from the Reserve Bank of India's Manual on Production Oriented System of lending of Agriculture, as well as summary record dated 17.7.1985 and in all subsequent years also the claims had been settled considering the Kharif season as commencing from 1st April to 30th September. Yet the learned single Judge has included the period of 1.10.85 to 10.11.85 in the Kharif season for the purpose of deciding the claims of the farmers. The argument is that understanding of the parties in this matter is of no consequence and the Kharif season, in no case can be advanced or delayed depending upon the rainfall in the area. According to the State of Gujarat what was required to be insured was the Kharif loan advanced between April and September and even if the premium was sent or accepted thereafter, that would not extend the Kharif loan Insurance because it would go beyond the scope of the actual period of Kharif season. The direction to settle the insurance claims for the insured crops in respect of Kharif 1985 considering the period of crop loan disbursement between 1.10.85 to November 10, 1985 has been challenged.

On similar grounds the impugned order dated 7.8.96 passed by learned single Judge has been challenged by GIC in L.P.As.Nos.1000 to 1008 of 1996.

In L.P.A.No.1396/97 the GIC has challenged the order dated 14.8.96 based on the order dated 7.8.96 passed by the learned single Judge and in L.P.A.No.12/97 the very same order dated 14.8.96 is under challenge by the State of Gujarat on identical grounds.

However, in rest of the seven L.P.As., out of which six have been filed by Co-operative Societies and seventh one by Bhavnagar District Co-operative Bank, the challenge is that even the period prior to April, 1985 i.e. from 1.1.85 to 31.3.85 should have been included in the Kharif 1985 season for the purpose of this Scheme and the benefit should have been given accordingly.

15. We find that in this group of matters, the village level Primary Co-operative Societies, which were engaged in the activity of agricultural credit to its member farmers, were only agitating the grievance of not

indemnifying the damages to their crop during the drought year of 1985. On the basis of the pleadings of the parties and after hearing them, the learned single Judge has found that the question for consideration was as to whether under the Crop Insurance Scheme 1985-86, the original petitioners were entitled to damages on the basis of the calculations against the loan advanced during January 1985 to March 1985 and from 1st October, 1985 to 10th November, 1985 also, in addition to the admitted position of eligible claim during the period between 1st April, 1985 to 30th September, 1985. We find that admittedly the Government had accepted the need of linking orient credit towards production programmes and the "Action Programme" for the development of co-operative credit had been formulated and circulated to spell out the measures necessary in the direction of implementing this common action programme. Thus the orientation credit production was considered to be vital as per the action programme emphasising that the credit has to be production oriented and it has to be determined on the basis of need and repaying capacity, the credit required for fertilisers, pesticides, seeds, etc. should be disbursed in kind with regard to the timing of disbursement of credit and its recovery. The introduction of "Credit Loans" was the main feature of the "Action Programme" for orienting credit production. The production was the main purpose for the arrangement of the finance and short term loans were to be given on the basis of anticipated crop. The uncertainty on account of natural calamities such as drought, flood etc. destroys the crop and adversely affects the cultivators capacity to repay the loans. Moved with this consideration, a comprehensive scheme for Crop Insurance was announced and introduced. The details of such Scheme were finalised in consultation with the Ministry of Finance and the General Insurance Corporation of India. This Scheme was to be administered jointly and in collaboration with the State Government and the State Government was to set up a State Crop Insurance Fund. The Scheme, as such, did not state which months or period to be covered under the Scheme and it only mentions of the Crop Loans issued for "Kharif 1985" and the insurance charges i.e. premium was to be included as an additional amount in the scale of business.

16. We have considered the grounds on which the order passed by the learned single Judge has been assailed in all these matters. We find that the preliminary objection, that the cases involve disputed questions of facts and, therefore, the petitions should not be

entertained, has been rightly rejected by the learned single Judge. The petitions were pending since 1987 with regard to the scheme of 1985 and the question as to what was the period for Kharif year of 1985 could be ascertained on the basis of the material, as was placed on record and,therefore, the petitions pending since 1987 after admission could not be thrown away in the year 1996 after a period of nearly ten years on the ground that they involve disputed questions of facts. We further find that no illusory dispute can be said to be sufficient for the purpose of rejection of a petition on the ground of disputed questions of facts. Even if a fact is disputed, if the material is on record, on the basis of which the real point in controversy can be decided, we do not find that the petitions,which have remained pending for a period over 10 years, should have been rejected on this ground.

17. The other preliminary objection, which was taken with regard to the locus standi of the village level Co-operative Societies to maintain the petitions, has also been rightly rejected. The petitioners Co-operative Societies were disbursing credit to its member farmers for the purpose of implementation of the comprehensive Crop Insurance Scheme. Therefore, such Co-operative Societies, which had advanced loans to the farmers, could certainly raise common grievance of the farmers and it cannot be said that Co-operative Societies were not at all concerned or that they were not aggrieved. Thus, the preliminary objection of locus standi has been rightly rejected. There was no question of any breach of contract in the case. The only question to be considered was as to whether the farmers were entitled to any benefit for the period January 1, 1985 to March 31,1985 and October 1, 1985 to November 10, 1985 under the Scheme and this common grievance of the farmers could not be underplayed by branding it as a grievance about the breach of any contract.

18. We may now deal with the contentions, which have been raised assailing the judgments of the learned single Judge on merits of the case. It has to be agreed on all hands that essentially the Scheme in question was a Scheme sponsored by Union of India for implementation through the GIC with the aid of the State Government and the whole object of the Scheme was the liberation of the farmers from the grip of the money lenders. It also had the orientation of more production coupled with the idea to give protection to the farmers against the adverse consequences of natural calamities like flood and drought. It is not in dispute that:-

-- New comprehensive Scheme was to be implemented from Kharif 1985 season.

-- The State Governments were to set up State Crop Insurance Fund with certain amount of initial capital.

-- Central Government was to release equal amount to the corpus of this fund.

-- The Scheme was to be jointly administered by the Government and the GIC.

-- Under sub-clause (2) of the Scheme, cut off date given was 1.4.85 for disbursement of crop loans and the cut off date for sending the proposal under clause (6) was 31.10.85, as per the record of the Conference.

-- The State of Gujarat had passed the Resolution dated 1.8.85 to implement the Scheme from Kharif season of 1985. Under this Government Resolution dated 1.8.85, the cut off dates were not mentioned as the decision in this regard was taken in the conference held at National level.

-- Although the cut off date for sending the proposal and premium by the Nodal Banks was 31.10.85, most of the District Co-operative Banks had not sent their declarations and premium amount and, therefore, the cut off date 31.10.85 was sought to be extended by another 10 days upto 10.11.85.

19. It is obvious from the facts of this case that the period of Kharif 1985 was not determined as such i.e. 1.4.85 to 30.9.85 and the terminal cut of date was extended to 31.10.85, which was later on extended upto 10.11.85.

20. The contents of the letter dated 4.9.85 sent by the Officer in charge of GIC to all Nodal Officers, Co-operative Banks/Commercial Banks for sending declarations by 30.9.85 in cases where the amount of loan was disbursed upto 31.8.85 and further loans disbursed in the month of October 1985, on or before 31.10.85, the contents of reminder dated 19.10.85, the contents of Gujarat State Co-operative Bank's letter dated 26.10.85 to all the Managers of District Central Cooperative Banks saying that the current year is the first year of Insurance Scheme and the procedure is to be completed by 30.10.85 and all the formalities are to be completed by 9.11.85, the contents of communication dated 28.10.85 by the Director of Agriculture addressed to the Secretary, Marangi Vividh Karyakari Sahakari Mandli Ltd. pointing out the last date for remitting the premium amount and

submitting the declaration by 10.11.85, the contents of NABARD's letter dated 7.5.85 to the effect that the Scheme of 1985 is essentially an insurance cover for the crop loans given by the Banks, the contents of NABARD's letter dated 9.7.85 and the contents of Reserve Bank of India's letter dated 6.7.85, clearly show that so far as the date of 1.4.85 is concerned, there is no discussion and the terminal cut off date was correctly understood to be 31.10.85 and the date of 30.9.85 could not be justified. The requirement of the crop loan system is that the necessary procedure and formalities should be planned so as to ensure that the credit is disbursed to members at the time when they need it most. The Schedule, providing for the Kharif season, as found in the Manual on production oriented system of loaning for agriculture issued by Reserve Bank of India, shows that for the Kharif season the period for fixation of the scales of finance under different categories of crop and communication to all concerned is December-January, preparation of credit limit statements, their consideration by the Managing Committee of Societies and forwarding applications to the Bank is January-February and sanction of credit limit statements by the Central Co-operative Banks is the month of March. This Schedule could not be conclusive for the purpose of defining the period of Kharif crop of 1985 and in our opinion, the view taken by the learned single Judge on the basis of the understanding of the parties that 1st April, 1985 was understood as the date for the commencement of the Kharif period of 1985 and the period 1.4.85 to 10.11.85 was the relevant Kharif period understood between all concerned for indemnifying the claim under the beneficial Scheme known as Crop Insurance Scheme, 1985 and, therefore, we find no justification to hold that the cut of date was 30.9.85. May be that hypothetically the Kharif period should be the same for all the years but on the basis of the material placed on record in this case, it is clear that for the purpose of this Scheme for Kharif crop of the year 1985 the parties had proceeded on the basis that the period October 1, 1985 to November 10, 1985 was not excluded and the Kharif period in the year in question 1985 certainly stood extended upto 10.11.85. In the facts of the present case, the factum of drought became known to all concerned by June/July 1985 and declarations and premiums were accepted even upto 10.11.85. Therefore, it was not a case of contractual insurance. The idea was to help the farmers and, therefore, in our opinion, Kharif period for the year 1985 must be taken to be the period commencing from 1.4.85 to 10.11.85.

21. The argument advanced on behalf of State of

Gujarat that what was extended was the cut off date for sending proposals to the GIC and not the period of disbursement of loan and what is insured is the crop loan for the Kharif season (insured as per Scheme), which, as per the settled practice and as per the Reserve Bank of India Manual, is between April and September and, therefore, the mere fact that the premium had been sent and accepted even after September and the declaration had been sent thereafter would not extent the period of insured season, cannot be accepted because in the Minutes of the meeting dated 21.10.85 it was stated that there was a strong case for extension of the cut off date for 10 more days and in the letter dated 28.10.85 sent by the Officer of the Director of Agriculture addressed to the Secretary, Marangi Vividh Karyakari Sahakari Mandli Ltd. it was stated that the last date for remitting the premium amount and submitting the declaration was 10.11.85. In view of this admitted position on facts, it is clearly borne out from the record that it can not be said that the cut off date could at the most be considered to be 31.10.85 and not as 10.11.85. Therefore, we do not find any ground to interfere with the finding of the learned single Judge and the view taken by him that in the facts of this case for the purpose of the benefits of this Scheme to the farmers the period of Kharif 1985 should be treated as extended upto 10.11.85.

22. So far as the period prior to 1.4.85 is concerned, mere advancement of loan in the month of January 1985, as alleged in certain petitions viz. Special Civil Application No.1350/87 and 982/87, does not mean that it was for the Kharif season of 1985. For reason of belated rains, the period of Kharif could be extended beyond September but by no stretch of imagination, the period prior to 1.4.85 could be included in the period of Kharif season. Even if it is accepted that Kharif Crop Loan Insurance Scheme 1985 is not a Crop Loan Insurance, but in fact a Crop Insurance, it does not advance the case for taking the Kharif season for any period prior to 1.4.85. The fact that there is drought had become known to all concerned in June/July 1985 and latest by August 1985 and the farmers were persuaded to take advantage under the Kharif Crop Insurance Scheme 1985 knowing the situation of drought and by no stretch of imagination the period of Kharif season 1985 for the purpose of this Scheme could include the period from January to March. The whole controversy for the period prior to 1.4.85 and beyond 30.9.85 has to be considered in the light of the facts of the present case and we do not find any basis for including the period prior to

1.4.85 as the period of Kharif season 1985 on the basis of the Scheme, the proceedings as were held in the Conference and it cannot be said even on the basis of the understanding of the parties that there was any basis so as to include the period of January to March in the year 1985 as the period of Kharif season 1985. In our opinion, the view taken by the learned single Judge in this regard so as to exclude any period prior to 1.4.85 is based on sound reasoning and it does not warrant any interference.

23. It is a case in which the Central Government was the author and sponsorer of the Scheme, Scheme was to be implemented through GIC for the benefit of the farmers and it was to be administered by the State. The period for Kharif season for the year 1985 for the purpose of this Scheme was to be decided with reference to the text of the Scheme and the understanding with which the parties had gone for the implementation of the Scheme, taking advantage thereof. There was no question of any sort of understanding so as to stretch back the period of Kharif season prior to 1.4.85 and, therefore, whatever reliefs which could be given to the farmers, to whom the loans had been advanced by Cooperative Credit Societies by treating the Kharif period beyond September 1985 and upto 10.11.85, have been given by the learned single Judge and rightly so.

24. In our opinion for the reasons adumbrated by us, in no way it was possible to consider the period of January to March as a part of Kharif season under this Scheme and accordingly it was well neigh impossible to include this period in the Kharif season of 1985.

25. The order passed by the learned single Judge, in our opinion, seeks to render substantial justice in this matter between the parties and the same does not warrant any interference in the Appeals either at the instance of the State of Gujarat or at the instance of GIC or at the instance of any of the other parties. We, therefore, do not find any substance in any of these 25 Appeals and all these Appeals are accordingly dismissed. No order as to costs.

(M.R.Calla,J)

(R.R.Tripathi,J)